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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,841	12/29/2000	Vivek Kashyap	BEA9-2000-0011-US1	1014

25253 7590 04/30/2004

IBM CORPORATION
IP LAW DEPT, ED02-905
15450 SW KOLL PARKWAY
BEAVERTON, OR 97006-6063

EXAMINER

LE, DIEU MINH T

ART UNIT	PAPER NUMBER
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2114

DATE MAILED: 04/30/2004

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/752,841

Applicant(s)

KASHYAP, VIVEK

Examiner

Dieu-Minh Le

Art Unit

2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2114

DETAILED ACTION

1. This Office Action is in response to the amendment filed February 05, 2004 in application 09/752,841.

2. Claims 1-19 are again presented for examination.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-19 are again rejected under 35 U.S.C. § 103(a) as being unpatentable Lee et al. (US Patent 6,601,101 hereafter referred to as Lee) in view of Espy et al. (US Patent 5,922,077 hereafter referred to as Espy).

This rejection is being applied for the same reasons set forth in the previous Office Action paper number 4, paragraph 3 mailed October 21, 2003.

As per claims 1-19, see the previous office action for the detailed teaching of Lee et al. and Espy et al. as well as the motivation and reasons for combined.

Applicant asserts that Lee in combining with Espy failed to teach or suggest the following:

Art Unit: 2114

a. the present invention receives ownership information at the second system from the first system prior to the detection of a failed state in the first system.

Examiner respectfully transverses Applicant's argument as follows:

a. First, in response to Applicant's argument that the references fail to show certain features of Applicant's invention, it is noted that the feature upon which Applicant relies (i.e., the present invention receives ownership information at the second system from the first system prior to the detection of a failed state in the first system) is not recited in the rejected claim. Although the claims is interpreted in light of the specification, limitations from the specification is not read into the claims. *In re Van Guens*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Second, it is not true that Lee in combining with Espy failed to teach "receiving ownership information at the second system from the first system prior to the detection of a failed state in the first system".

Examiner would like to bring Applicant attention to Lee's method for handing off TCP sessions in system including a transparent access to network attached devices [col. 3, lines 33-35] and TCP/IP session communication establishment among communications devices [col. 4, lines 39-65]. Lee explicitly demonstrated the Applicant's limitation function via:

- increasing the overall system performance of the system while reducing the total cost of ownership [col. 2, lines 46-38-40]];
- DHCP routing mechanism via IP addressing information (i.e., broadcasting information) [col. 14, lines 60-65];
- forwarding information or packets to other communication devices via TCP session [col. 4, line 43-46 and col. 6, lines 3-11];
- packet exchange sequences between first and second device in supporting the TCP fail-over connection [col. 11, lines 30-46];

It is very clear to an ordinary skill in the art to realize the Lee's packets forwarding, DHCP routing via IP addressing, etc... etc... as being the receiving ownership information at the second system from the first system prior to the detection of a failed state in the first system as claimed by Applicant. This

Art Unit: 2114

is because 1) Lee performs TCP fail-over connection among communication devices; 2) nodes information identification, determination, receiving, reporting, acknowledging from one to other nodes via TCP/IP session within Lee do clearly demonstrate second system received information before any detection failure from the first system so that the failed system can be quickly recovered for its contingency purpose and its enhancement performance process; and 3) Lee's master/slave relationship [col. 23, line 65] via TCP/IP process can perform data broadcasting function therein. This is because this feature is notorious well known in the art of data detection and recovery arena.

Third, as indicated in previous Office Action that it would have been obvious to a person having ordinary skill in the art at the time the invention was made first, to realize the Lee's method for handing off TCP sessions in system including a transparent access to network attached devices comprising **state information including source/destination IP addresses, port numbers, TCP sequence, etc...(i.e., ownership information) and application information (i.e., file directory, system configuration, protocol and logic control information, etc...(i.e., ownership information) as being the ownership**

Art Unit: 2114

information as claimed by Applicant. This is because the Lee's method for handing off TCP sessions in system does perform the data/system fail-over detection and correction via system data information or ownership information, such as IP addressing, port numbers, node ID, etc... in ordering to ensure system operation continuity. Lee clearly demonstrated the state information used to allowing the application running without any disruption among the first, second, and third devices or systems connectivity; second, one would modify the Lee's method for handing off TCP sessions to explicitly including the **fail-over switch for routing data including transmitting/receiving information, communication port, routing information, etc...**as taught by Espy's recovery and fail-over method having plurality of device connected with communication paths in supporting the data/system connectivity error detection and restoration via the fail-over process.

This modification would have been obvious because a person having ordinary skill in the art would have been motivated to do so to provide the systems connectivity with data/communication path error detection and correction via fail-over capability with a mechanism to enhance the data/network interfaces, performance, availability, and data/network operation in ordering to providing an optimal data/information error

Art Unit: 2114

detection and correction system. By utilizing this approach, the computer devices or systems with error detection and correction (i.e., fail-over) capabilities can be realized that any error, or failure occurred can be identified, detected, repaired, corrected via data processing scheduling/access, data transmission control, and correct data execution via state information or ownership information.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dieu-Minh Le whose telephone number is (703) 305-9408. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel, can be reached on (703)305-9713. The fax phone number for this Group is (703)872-9306.

Art Unit: 2114

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703)872-9306 (for formal communications; please mark "EXPEDITED
PROCEDURE")

Hand-delivered responses should be brought to Crystal Park II, 2121
Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).



**DIEU-MINH THAI LE
PRIMARY EXAMINER
ART UNIT 2114**

DML

4/28/04